

**CHAPTER 8-08  
OFFSITE IMPROVEMENT CODE**

**SECTIONS:**

<a href="#"><u>8-08-001-0001</u></a>	<b>PUBLIC IMPROVEMENTS DEFINED:</b>
<a href="#"><u>8-08-001-0002</u></a>	<b>WHEN REQUIRED:</b>
<a href="#"><u>8-08-001-0003</u></a>	<b>EXEMPTIONS:</b>
<a href="#"><u>8-08-001-0004</u></a>	<b>MINIMUM REQUIREMENTS:</b>
<a href="#"><u>8-08-001-0005</u></a>	<b>LIMITATION:</b>
<a href="#"><u>8-08-001-0006</u></a>	<b>OPTIONS FOR ASSURANCE OF PERFORMANCE FOR CONSTRUCTING PUBLIC IMPROVEMENTS:</b>
<a href="#"><u>8-08-001-0007</u></a>	<b>PROJECT ENGINEER:</b>
<a href="#"><u>8-08-001-0008</u></a>	<b>PERMIT REQUIRED FOR WORK WITHIN CITY RIGHTS OF WAY OR EASEMENTS:</b>
<a href="#"><u>8-08-001-0009</u></a>	<b>CONSTRUCTION AND INSPECTION:</b>
<a href="#"><u>8-08-001-0010</u></a>	<b>ACCEPTANCE OF PUBLIC IMPROVEMENTS:</b>
<a href="#"><u>8-08-001-0011</u></a>	<b>BUILDING PERMITS:</b>
<a href="#"><u>8-08-001-0012</u></a>	<b>OCCUPANCY:</b>
<a href="#"><u>8-08-001-0013</u></a>	<b>APPEALS:</b>
<a href="#"><u>8-08-001-0014</u></a>	<b>PENALTIES:</b>

**SECTION 8-08-001-0001 PUBLIC IMPROVEMENTS DEFINED:**

Public improvements shall mean any construction or reconstruction within a City, State, or County public right-of-way, public easement, or drainage way within the corporate limits of the City of Flagstaff. Public improvements include, but are not limited to:

- A. The construction of a street section including grading, base course, pavement, street lights, curb and gutter, sidewalk or bicycle path, other traffic improvements, and drainage facilities to adopted City standards and specifications.
- B. The construction and/or extension of public facilities including water, sewer, gas, electric power, street lighting, telephone, and cable television in accordance with the requirements of the owning franchise or City utility and adopted City standards and specifications.
- C. The construction of an alley section including grading, base course, pavement, and drainage facilities to adopted City standards and specifications.
- D. The installation of fire hydrants shall be in accordance with City standards. The number and location of fire hydrants shall be pursuant to Fire Department requirements and adopted City Standards and Specifications.
- E. The construction of drainage improvements shall be in accordance with adopted City standards and specifications and City Flood Plain Regulations. (Ord. 1925, 12/03/96)

(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Amended, 12/03/96)

**SECTION 8-08-001-0002 WHEN REQUIRED:**

Public improvements shall be required:

- A. For any subdivision of land, subject to the subdivision regulations of the City, including minor land divisions as defined and regulated by the City's Land Development Code.
- B. For all development or improvements requiring a building permit as defined by the Building Code of the City, except as exempted hereinafter. Development and improvement are defined as any improvement, alteration, or construction activity that requires a building permit.
- C. Single family or duplex developments on contiguous parcels, being developed simultaneously or in phases, and owned by the same or related parties or entities, will be considered as one development and shall be subject to the provisions of this Ordinance.
- D. For the development or permanent outdoor uses which do not necessarily require a building permit, but which do require Development Review Board approval, including parks and active public or private recreation facilities. (Ord. 1925, 12/03/96)(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Amended, 12/03/96)

**SECTION 8-08-001-0003 EXEMPTIONS:**

The following developments shall be exempt from constructing public improvements pursuant to the provisions of this Ordinance as indicated:

- A. A single-family detached residence or a duplex residence of any value or an addition or alteration to any existing single-family residence or existing duplex residence, except for water and sewer line extensions needed to serve the development and sized per the minimum requirements, pursuant to Section 8-08-001-0004.
- B. Except as provided for in Paragraph C, any addition to an existing nonresidential structure, or multi-family residential structure, as well as any alteration to either of these two uses that results in an increase in the intensity of the use, which does not exceed fifty percent (50%) of the actual value of the structure prior to the start of construction as determined from the records of the Coconino County Assessor or by a current appraisal by a state licensed appraiser.
- C. All improvements to the structures described in paragraph B of this section shall be cumulative with respect to time and, upon reaching the fifty percent (50%) cumulative value of the structure, the provisions of this Ordinance shall apply. Cumulative improvement valuation shall be applicable upon the effective date of this Ordinance. (Ord. 1925, 12/03/96)(Ord. No. 1925, Enacted, 05/02/97)

**SECTION 8-08-001-0004 MINIMUM REQUIREMENTS:**

Public improvements shall be required for all projects in conformance with the following minimum requirements. The Development Review Board is authorized to apply the City's Ordinance requirements as a condition for approval:

- A. Right-of-Way and/or drainage way: If, as determined by the Development Review Board, the property to be developed does not have adequate rights-of-way to facilitate intensified use due to the new development, or will not accommodate proposed or contemplated public improvements or drainage and drainage access, then necessary right-of-way and/or drainage way shall be granted to the City. The Development Review Board may impose special building setback requirements to assure clear space for future right-of-way needs as may be contemplated under the existing GMG or other approved land use documents. Public rights-of-way or public utility easements must be provided for all public improvements which are or will become property of the City.
- B. Water: Water lines sized for the development in accordance with City Codes and standards, and water impact studies, if required, shall be extended across the full frontage, sideage, and rearage of the property being developed, where needed, as determined by the City Engineer.
- C. Sanitary Sewer: Sanitary sewer lines sized for the development in accordance with City Codes and standards, and sewer impact studies, if required, shall be extended across the full frontage, sideage, and rearage of the property being developed, where needed, as determined by the City Engineer.
- D. Drainage: Drainage plans and improvements shall be required in accordance with City Codes and standards.
- E. Street Improvements: Street improvements shall be constructed across full property frontage, sideage, and rearage by the Developer as follows:
  - 1. Any multi-residential or non-residential construction shall be required to construct street improvements pursuant to Section 8-08-001-0004 E.6. If the property being developed is not adjacent to an existing improved public street, Section 8-08-001-0004 E.4 or Section 8-08-001-0006 shall apply.
  - 2. When it is determined by the Development Review Board that the construction of street improvements as required in Section 8-08-001-0004 is not practical at that point in time, the Development Review Board may recommend that Section 8-08-001-0006 apply.
  - 3. If the City has budgeted, in the current fiscal year, funds for the construction of street improvements for the street in question, then the improvements required by this Ordinance will be reduced by the improvements to be funded by the City.
  - 4. Where the property being developed is separated from an existing improved public street by an unimproved section of public street, the City may construct street improvements thereby making the property being developed adjacent to an existing improved public street. If the City elects to construct the street improvements, it will construct the street improvements at a time that will coincide with the construction of the street improvements required of the property being developed.
  - 5. When property access is necessary or proposed via an alley, as the result of a new development or a change of use, full width alley improvements shall be constructed along the alley frontage according to City Engineering Design Standards. Alley

improvements shall also be extended to the nearest public street if no such improved connection, in whole or part, presently exists.

6. The street improvement requirement shall be the greatest of the following:
  - a. A one-half (1/2) plus eight (8) foot section of a Type VIA or IVB Street for rural residential development; or
  - b. A one-half (1/2) plus eight (8) foot section of a Type IV Street for residential development; or
  - c. A one-half (1/2) plus eight (8) foot section of a Type III Street for all other development; or
  - d. A one-half (1/2) plus eight (8) foot section of a Type Street as indicated by the City's Circulation Element or as indicated by the Arizona Department of Transportation or Coconino County within their respective jurisdiction; or
  - e. A one-half (1/2) plus eight (8) foot section of the Type Street as determined by the estimated Average Daily Traffic to be generated by the specific development; or
  - f. A Type Street adequate to serve the anticipated traffic volumes generated by the development and the projected neighborhood growth patterns resulting in future developments as may be contemplated under the existing GMG or other approved land use documents.
- F. The City may participate in the cost of constructing new Type I or II Streets upon a finding by the City Council that:
  1. The Type I or II Arterial Street in Question is shown on the City's Circulation Element; and
  2. There are no existing improvements on the proposed arterial; and
  3. In the opinion of the City Council the street is a reasonable distance to an existing, improved arterial street to allow connection; and
  4. The Developer or the City can obtain the necessary right-of-way for the Arterial Street and its connection to the existing street system.

Provided all the above conditions are met, the City's participation shall be limited to the difference in construction cost between the Type Street indicated on the Circulation Element and that Type Street necessary to serve the Average Daily Traffic generated by the proposed development as determined in Section 8-08-001-004 E.6.
- G. When it is necessary to improve a street and, after application of the requirements of Section 8-08-001-0004 A., sufficient right-of-way is not available from other area property owners not subject to the provisions of this Ordinance, the Community Development Director may, with the approval of the City Council, obtain the right-of-way upon

terms that are equitable to the property owner and the City, including assumption by the City of all or part of the costs of street improvements.

H. TRAFFIC RELATED PUBLIC IMPROVEMENTS REQUIRED.

1. Pursuant to the City of Flagstaff, Engineering Division, and the Engineering Design and Construction Standards & Specifications, certain developments are required to perform, and submit for approval, a Traffic Impact Analysis (TIA).
2. When the approved TIA identifies impacts to the public road system, as a result of the proposed development, impact mitigation is required. Design and construction of improvements that mitigate the identified impacts will be constructed by the Developer.
3. All required improvements identified in the TIA must be wholly attributable to the impact created by the development.

I. OTHER IMPROVEMENTS: As may be reasonably required by the Development Review Board. (Ord. 1925, 12/03/96)

(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0003)

**SECTION 8-08-001-0005 LIMITATION:**

To ensure that public improvements required to be constructed under this Ordinance are equitable to the affected property owner, the limitations listed below shall apply. These limitations do not apply to subdivisions of land.

1. If the rights-of-way required to be dedicated comprise an area greater than one-half (1/2) of the designated Street Type rights-of-way as determined by the City's Circulation Element or roadway designation per the Arizona Department of Transportation; or
2. If the rights-of-way required to be dedicated comprise more than fifteen percent (15%) of the total land area of the property being developed;

Then upon dedication of the rights-of-way to the City, the City shall pay the property owner the fair market value for that amount of land which exceeds the amounts identified in A.1 or A.2 above.

- B. If the public improvements proposed by the City are greater than those required for the subject development street improvement, and if at the time of development the City wishes to make improvements to its infrastructure capacities, the City will bear the additional cost associated with the upgrading of capacities of those improvements. The limits of the City's participation shall be determined by the difference in the approved design and construction costs with and without capacity increases of those improvements.
- C. In the event that the granting of right-of-way or drainage way creates a nonconforming lot due to the decrease in land, the remaining portion

shall, at the City's option, either be considered a legal nonconforming lot or be purchased by the City at fair market value. (Ord. 1925, 12/03/96)

(Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0004)

**SECTION 8-08-001-0006      OPTIONS FOR ASSURANCE OF PERFORMANCE FOR CONSTRUCTING PUBLIC IMPROVEMENTS:**

A.    ACCEPTABLE OPTIONS: Pursuant to the recommendation of the Development Review Board prescribed in Section 8-08-001-0004 E.2, and subject to approval by the Grants/Contracts Manager, City Engineer, and City Attorney, the following alternatives for assurance of performance are available to the Developer:

1.    Cash Deposit. The Developer/Principal may fulfill the public improvement requirement by a cash deposit. A separate accounting for the cash deposit will be maintained by the Finance Division, however, the Developer/Principal does not accrue interest on this type of assurance.
2.    Certificate of Deposit. The Developer/Principal may provide a certificate of deposit (automatically renewable) as assurance of construction of the public improvements required. The certificate of deposit must be accompanied by an "Assignment of Certificate of Deposit and Acknowledgement by Issuer" form. The interest accrued would be returned to the Developer/ Principal along with the certificate of deposit.
3.    Letter of Credit. The Developer/Principal may provide a letter of credit from an approved financial institution authorized to do business in the State of Arizona.
4.    Performance Bond. The Developer/Principal may post a performance bond issued by a surety bonding company holding a certificate of authority to transact surety business in the State of Arizona. Bonds shall not be executed by an individual surety or sureties. The bond shall be made payable and be acceptable to the City of Flagstaff, shall be written or countersigned by an authorized representative of the surety who is either a resident of the State of Arizona or whose principal office is maintained in this State, and shall have attached thereto a certified copy of Power of Attorney of the signing official. In addition, said company shall be rated "A-" or better as required by the City of Flagstaff, as currently listed in the most recent Best Key Rating Guide, published by the A.M. Best Company.
5.    Pledge of Collateral. The Developer/Principal may offer security involving the pledge of collateral, e.g. real property held in trust for the City's benefit.
6.    Other. Such other assurance or security as the Grants/ Contracts Manager, City Engineer, and City Attorney may recommend and the Mayor and Council may approve as appropriate and necessary to secure completion of the required improvements.

B.    PROCEDURES FOR ASSURANCE OPTIONS:

1. All of the above assurance options must be accompanied by a City of Flagstaff "Assurance of Performance" agreement for the public improvements. In addition, if the Developer/Principal is a corporation, the assurance must also be accompanied by a City of Flagstaff "Authorized Signature" form.
2. Assurance of construction for not less than one hundred twenty percent (120%) of the estimated construction costs of uncompleted, required public improvements may be offered to and accepted by the City upon approval by the Grants/Contracts Manager, City Engineer, and City Attorney. As determined by the City Engineer, the assurance amount may be increased above one hundred twenty percent (120%) in situations which may include, but not limited to, incomplete and/or failure to provide design construction plans or if design or construction difficulties are anticipated. A company providing such security on behalf of the Developer shall be properly licensed to do business in the State of Arizona. Upon acceptable completed portions of the work as determined by the City, the City Engineer may authorize releases of no less than twenty percent (20%) of the security (engineer's estimate plus twenty percent 20% contingency). In no event shall the assurance be reduced below ten percent (10%) of the principal amount until the project is completed and accepted. All remaining security shall be returned or released within thirty (30) days after final written acceptance of public improvements by the City Engineer.
3. The City of Flagstaff assurance approval, partial release and final release procedures are as follows: (1) allow minimum of four working days to process an approval, (2) allow a minimum of six working days to process the partial or final release, with the exception of a cash assurance, which will be determined by the cut-off of the Finance Division Accounts Payable schedule.

C. TERM OF OBLIGATION:

1. The period within which the required public improvements must be completed and shall be incorporated in the documents creating the assurance. If the improvements are not completed within the specified period identified by the assurance as evidenced either by a lack of work on the improvements for a period of sixty (60) consecutive calendar days (except for adverse weather conditions); or the improvements as constructed are not acceptable to the City and the Developer/Principal is unwilling or unable to make satisfactory corrections, the City may, upon verification of those facts to the Developer/ Principal, draw upon the said deposited funds the estimated amount necessary to complete the public improvements.
2. The assurance shall remain in full force and effect until (1) the public improvements for said project have been completed and accepted by the City as evidenced by a letter of acceptance by the City Engineer, or (2) said deposited funds have been exhausted by withdrawals by the City.
3. An extension may be granted for sufficient cause for the said project at the discretion of the Grants/Contracts Manager and/or City Engineer if requested in writing by the Developer/Principal.

4. In the event that the required street improvements are not constructed, or under construction, within three (3) years, the assurance of construction will be reviewed for a possible two (2) year extension with due consideration of the Funded and Unfunded Listing of the Five (5) Year Capital Improvement Projects. If the City does not commence construction of street improvements adjacent to the subject property within this five (5) year period, the City may: (1) require the Developer to construct said street improvements within the following 12 month period; (2) require the Developer to provide a new surety acceptable to the City; (3) the City may call the surety and build the improvement; or (4) waive the surety.
  - D. ASSURANCE OF CONSTRUCTION: The amount of assurance of construction shall be the cost required to design, if necessary, and construct the required improvements as approved by the City Engineer, subject to the provisions in subsection A.4. above. All public improvements shall be required to be completed prior to a certificate of occupancy being issued, unless Section 8-08-001-0012 applies. (Ord. 1925, 12/03/96)
- (Ord. No. 1663, Ren&Amd, 08/07/90, 8-08-001-0005; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0005)

**SECTION 8-08-001-0007 PROJECT ENGINEER:**

- A. The owner or developer shall assure the City that an engineer or land surveyor, as required, registered in Arizona will be employed to provide required services for public improvements, unless waived by the City Engineer. The responsibilities of the engineer or land surveyor shall include, but not be limited to the following:
  1. Preparation of the required Engineering Design Report for subdivisions and/or plans for required public improvements.
  2. Certification that horizontal and vertical alignment and dimensions of public improvements have been staked in conformity to City standards and specifications and to the Engineering Design Report or plans approved by the City Engineer.
- B. The owner or developer shall pay a fee of one percent (1%) of the construction estimate for water, sanitary sewer, street and drainage improvements to the City of Flagstaff for the preparation of "as-built" plans by the City. (Ord. 1925, 12/03/96)(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0006)

**SECTION 8-08-001-0008 PERMIT REQUIRED FOR WORK WITHIN CITY RIGHTS OF WAY OR EASEMENTS:**

- A permit issued by the City Engineer, and/or other jurisdictional authority, shall be required prior to any construction within public rights-of-way or public easements. Such permit shall be issued subject to the following requirements:
- A. Approval of an Engineering Design Report and construction plans for subdivisions or approval of construction plans for other public improvements, unless plan requirements have been waived by the City Engineer. Plans shall have Arizona Department of Environmental Quality



approval for water and sanitary sewer systems and shall be approved by all utility companies.

- B. Payment of inspection and testing fees for all public improvements located within public rights-of-way or public easements shall be in accordance with the current fee schedule adopted by Resolution of the City Council and on file with the City Clerk.
- C. Engineering Design Report and/or plan approval shall be valid for one year from the approval date of the City Engineer, after which time review and approval by the City Engineer, payment of fees for any uncompleted work at the then current fee schedule, and reissuance of the permit(s) are required.
- D. Private utility companies shall be required to obtain permits for work upon their facilities within public rights-of-way or public easements and shall be exempt from payments of fees.
- E. All departments of the City of Flagstaff shall be required to obtain permits for work upon new facilities within public rights-of-way or public easements and shall be exempt from payment of fees. (Ord. 1925, 12/03/96)

(Ord. No. 1663, Amended, 08/07/90; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0007)

**SECTION 8-08-001-0009 CONSTRUCTION AND INSPECTION:**

- A. Construction and scheduling of construction of public improvements shall be the responsibility of the owner or Developer or his/her designated representative. All construction shall conform to adopted City standards and specifications and to the Engineering Design Report and/or plans approved by the City Engineer.
- B. No underground utilities shall be installed in a new street until rough grading of the street is complete. All underground utility construction shall be complete, including service lines to each lot, prior to paving a street.
- C. Inspection for conformity to the Engineering Design Report and/or plans and specifications approved by the City Engineer will be provided by the City. Scheduling of inspection, including notification before beginning construction and requests for inspection at check points during the course of construction, shall be required. The City Engineer shall have the authority to temporarily halt construction and order any changes necessary to bring the construction of public improvements into conformity with City standards and specifications and the Engineering Design Report and/or plans approved by him/her. (Ord. 1925, 12/03/96)

(Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0008; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0008; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0008)

**SECTION 8-08-001-0010 ACCEPTANCE OF PUBLIC IMPROVEMENTS:**

- A. The City Engineer shall provide for inspection of required improvements during construction to ensure their satisfactory completion.
- B. If the City Engineer finds upon inspection that any of the required improvements have not been constructed in accordance with the City's adopted engineering standards and specifications and the approved construction plans, the Developer/Principal shall be responsible for completing or replacing such improvements as to the specifications of the City.
- C. Final inspection of public improvements will be scheduled with the City Engineer prior to their acceptance.
- D. Except as hereinafter provided in Section 8-08-001-0006B.2. and 8-08-001-0006, the City will not accept the required improvements nor release any assurance until the project is accepted by the City Engineer. The City Engineer shall issue a letter of completion upon final acceptance. (Ord. 1925, 12/03/96)

(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0009)

#### **SECTION 8-08-001-0011 BUILDING PERMITS:**

The Chief Building Official may issue a building permit when:

- A. The required Engineering Design Report and/or construction plans for public improvements have been conditionally approved by the City Engineer and found to be in substantial compliance with City standards and specifications; and
- B. An assurance has been provided pursuant to Section 8-08-001-0006; and
- C. Roadway infrastructure, pavement, curb/gutter, and sidewalk have been completed for single-family subdivisions. If roadway infrastructure completion is not practical, an agreement may be executed by the Developer that obligates the Developer to ensure the continued repair and maintenance of all paving, curb/gutter, and sidewalk until final completion and City acceptance of the subdivision infrastructure. Said agreement must be approved by the City Engineer and the City Attorney's Office. (Ord. 1925, 12/03/96)

(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Ren&Amd, 05/06/97, 8-08-001-0010; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0010)

#### **SECTION 8-08-001-0012 OCCUPANCY:**

The Chief Building Official may issue a certificate of occupancy for any building when all required public improvements have been completed and accepted by the City Engineer. If paving is impossible due to climatic conditions, completion of paving, curb, gutter, and sidewalk may be postponed until after occupancy, provided:

- A. All other public improvements are complete and acceptable to the City Engineer; and
- B. An engineer-certified all-weather road, including necessary maintenance agreements to ensure passage of emergency vehicles, is provided to each building site; and
- C. Temporary storm drainage facilities, approved by the City Engineer, that provide for the safe conveyance of storm waters until infrastructure completion are provided; and
- D. Assurance of construction for the uncompleted street improvement for not less than one hundred twenty percent (120%) of the cost of completing the public improvements within one (1) year in accordance with Section 8-08-001-0006 and Section 8-08-001-0010 is offered to and accepted by the City upon approval by the Grants/Contracts Manager, City Engineer, and City Attorney. (Ord. 1925. 12/03/96)

(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0011)

#### **SECTION 8-08-001-0013 APPEALS:**

The owner or Developer may request that the City Council grant a variance from the minimum requirements established by this Ordinance. In addition, if appropriate, the owner or Developer may also appeal any dedication or exaction requirement imposed by the Development Review Board or other administrative agency or official that exceeds the minimum development standards required by this ordinance to a Hearing Officer in accordance with A.R.S. 9-500.12.

#### **A. VARIANCE REQUEST PROCEDURE**

The following procedures shall apply to a request for a variance:

1. Application. The applicant shall submit to the Community Development Director a written request setting forth the nature of the variance request. The request shall reference the specific minimum engineering standards or other ordinance requirements from which variance relief is requested and also contain a narrative description of the special circumstances in support of the variance. Said special circumstances may include, but not be limited to topographical conditions, architectural or engineering considerations, construction practices or other factors or circumstances that make the application of said minimum engineering standards or other ordinance requirements unnecessary or impractical.
2. Fee. A variance application fee as required by this section shall be submitted with the application. Said fee shall be a minimum of \$200.00. The fee for any project with an estimated public construction cost of \$40,000.00 or greater shall be one-half (1/2) of one percent (1%) of estimated construction cost, not to exceed \$1,000.00. Failure to submit the appropriate fee will result in an incomplete variance request which will not be scheduled for hearing until the application fee has been received.

3. Planning and Zoning Commission Review. Upon receipt of a completed application, the variance request will be scheduled for consideration at a public meeting of the Planning and Zoning Commission within 21 days, unless scheduling requires otherwise. The applicant will be notified in writing of the Planning and Zoning Commission hearing date. The Planning and Zoning Commission may recommend granting the requested variance, modifying the request, or denying the variance request.
4. City Council Review. The recommendation of the Planning and Zoning Commission will be forwarded to the City Council for consideration at a public meeting. The variance request will be scheduled as soon as practical but normally should not exceed 30 days from the date of the Planning and Zoning Commission hearing, unless scheduling requires otherwise. The applicant will be notified in writing of the date of the City Council meeting.

B. ADMINISTRATIVE APPEAL PROCEDURE

The following procedures shall apply to an administrative appeal:

1. The appeal must be filed on a form provided by the City and filed with the Hearing Officer designated by the City of Flagstaff within 30 days after the Development Review Board or administrative official has made a determination requiring the dedication or exaction.

The identity of the Hearing Officer is as follows:

The City of Flagstaff Planning and Zoning Commission  
c/o The Community Development Director  
Community Development Department  
211 W. Aspen Avenue  
Flagstaff, Arizona 86001  
(520) 779-7610

2. The appeal shall specify, by allegation or allegations, the basis for the request.
3. The hearing will be scheduled within thirty (30) days of receipt by the Hearing Officer of the applicant's request. In the event the appeal is based on issues pertaining to essential nexus and/or rough proportionality, the City will bear the burden of proving that the dedications or exactions to be imposed on the property bear an essential nexus between the requirement and a legitimate city interest and that the proposed dedication or exaction is roughly proportional to the impact of the land use, improvement or development proposed by the applicant.
4. A minimum of ten (10) calendar days notice will be given to the applicant of the date, time and place of the hearing unless the applicant indicates to the Hearing Officer in the appeal request that less notice is acceptable. In the event a staff report is prepared for submittal to the Hearing Officer, the applicant shall be entitled to receive a copy as soon as it becomes available.
5. The Hearing Officer's decision shall be rendered within five (5) working days after the appeal is heard.

6. The Hearing Officer may affirm the dedication or exaction, modify it, or delete the requirement.
  7. No fee will be charged for filing the appeal.
  8. There are no further administrative appeals beyond the Hearing Officer. If the applicant is dissatisfied with the decision of the Hearing Officer, the applicant may file a complaint for a trial de novo with the Coconino County Superior Court within thirty (30) calendar days of the Hearing Officer's decision.
- C. Public Notification Procedure. For either an appeal or variance request, the property shall be posted with a plainly visible notice indicating the appeal/variance matter and scheduled hearing(s) and location(s) information. The City shall also provide written notification of the appeal/variance to the adjacent property owners as shown by the last assessment of the adjacent properties by first-class mail. (Ord. 1925, 12/03/96)

(Ord. No. 1925, Enacted, 12/03/96; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0012)

#### **SECTION 8-08-001-0014 PENALTIES:**

Unless otherwise provided or designated, any person convicted of a violation of any section of this City Code is guilty of a misdemeanor and shall be fined in a sum not to exceed two thousand five hundred dollars (\$2,500) for any one offense, and a person may be confined in the County jail for a period not exceeding ninety (90) days. Any violation which is continuing in nature shall constitute a separate offense on each successive date the violation continues, unless otherwise provided. (Ord. 1995, 12/03/96)(Ord. No. 11, Renumbered, 05/01/97, 8-08-001-0013; Ord. No. 1925, Ren&Amd, 12/03/96, 8-08-001-0013)